

### REMARKS

In reply to the Non-Final Office Action of July 22, 2009, the applicants submit the following remarks. Claims 1 to 26 were pending, with claims 15 to 24 having been withdrawn. Applicants have proposed to amend claim 1. Support for the amendments to claim 1 can be found at least in FIG. 1. Applicants have also proposed to add new claims 27-28, which would be supported at least by FIG. 1 and the accompanying text. Thus, the proposed amendments and new claims would add no new matter. Claims 18-19 are cancelled. Applicants respectfully reserve the right to pursue any cancelled subject matter in one or more continuing applications.

#### 35 U.S.C. Section 103 Rejections

Claims 1-11 and 26 were rejected as being allegedly unpatentable over U.S. Patent No. 5,741,276 ("Poloyko") in view of U.S. Patent No. 5,254,130 ("Poncet"). Applicants respectfully disagree in light of the amendments made to claim 1 and the following remarks.

Amended claim 1 is directed to a surgical suture placement device having a handle assembly, an elongated hollow outer tube connected at a proximal end to the handle assembly, a suturing assembly, where a distal end of the suture placement device is the suturing assembly and the suturing assembly has a distal end that at its tip is arc shaped along an axial cross-section and the distal end has an outer diameter less than an outer diameter of a proximate end of the suturing assembly and a hollow inner tube located within the hollow outer tube and connecting the handle assembly to the suturing assembly by traversing the inside of the elongated hollow outer tube, wherein between the handle assembly and the distal end of the suturing assembly an exterior of the device has a substantially consistent diameter.

Poloyko in view of Poncet fail to teach a device that between the handle assembly and the distal end of the suturing assembly an exterior of the device has a substantially consistent diameter, where a distal end of the suture placement device is the suturing assembly and the suturing assembly has a distal end that at its tip is arc shaped along an axial cross-section and the distal end has an outer diameter less than an outer diameter of a proximate end of the suturing assembly. Poloyko has a finger grip member 35 which is connected to cylindrical section 37

(FIG. 2). The cylindrical section 37 tapers downward to tube 36. The head 38 of the device then flares outward toward an end of the device and has a cut out region 39 near its end. Poncet has a clevis 11 that is wider than the adjacent rotating member 7 (FIG. 1). Poncet's jaws 13 at the end of the clevis 11 appear to be as wide or wider than the clevis 11. For at least this reason, claim 1 and the claims that depend therefrom are not obvious over Poloyko in view of Poncet.

Claims 12 was rejected over Poloyko in view of Poncet and further in view of U.S. Patent No. 5,797,929 ("Andreas").

Claim 12 depends from claim 1.

Andreas shows a device with a shaft assembly 12 that at a distal end has a fitting 22 with an exterior diameter greater than the portion of the shaft assembly 12 that is directly next to the fitting. For at least this reason, claim 12 is not obvious over Poloyko in view of Poncet and Andreas.

Claims 14 and 25 were rejected over Poloyko in view of Poncet and further in view of U.S. Patent No. 6,315,784 ("Djurovic").

Djurovic is used to show a needle guide. While Djurovic shows a spool cover 14 that tapers to its end, replacing Poloyko's head 38 with the spool cover 14 of Djurovic's spool cover would not result in a device that between the handle assembly and the distal end of the suturing assembly an exterior of the device has a substantially consistent diameter, where a distal end of the suture placement device is the suturing assembly and the suturing assembly has a distal end that at its tip is arc shaped along an axial cross-section and the distal end has an outer diameter less than an outer diameter of a proximate end of the suturing assembly. For at least this reason, claim 12 is not obvious over Poloyko in view of Poncet and Djurovic.

#### New Claims

Claims 27 and 28 are new. The new claims depend on claim 1 and therefore the reasons above apply to the new claims.

In addition, new claim 27 requires that between the handle assembly and the suturing assembly the device *consists of* the hollow inner tube, the hollow outer tube and the rod.

Poloyko has a tube 64 surrounded by a tube 36 surrounded by cylindrical section 37. Thus, modifying Poloyko with Poncet by adding a further elongated hollow outer tube (see page 3 of the office action) would not meet the claim limitations of claim 27.

Claim 28 recites a cylindrical region of the suturing assembly that is between the proximal end of the suturing assembly and the distal end and has an aperture for the needle to exit from the suturing assembly. Poncet and Andreas do not have a needle. Djurovic has a needle that extends out of the tip of the device. Poloyko has a needle that extends out of a side of the device, but the needle extends from a rounded portion of the device. For this further reason, the cited references do not describe the limitations of claim 28.

#### Rejoinder

Upon allowance of any of the device claims, applicants respectfully request that any withdrawn method claims that require all of the limitations of the allowed device claim be considered for rejoinder under MPEP 821.04(b).

Conclusion

Applicants respectfully request that all claims be allowed. Applicants do not concede any positions of the Examiner that are not discussed above, nor do applicants concede that there are not other good reasons for patentability of the presented claims or other claims. The extension fee for two months in the amount of \$245 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No. 07917-0160001.

Respectfully submitted,

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